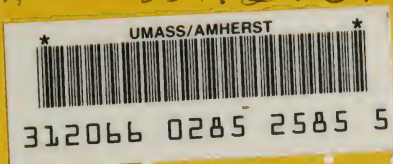
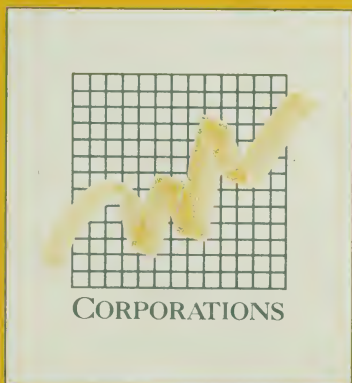


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Organizing a Non-Profit Corporation



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Office of the Massachusetts Secretary of State
Michael J. Connolly, Secretary

Organizing a non-profit corporation

This brochure is designed to give you general assistance in organizing a non-profit corporation. The process can be complicated and the drafting of complex documents may be necessary. You may need the assistance of a lawyer.

The kinds of corporations which normally fall into the non-profit category are listed at the end of this brochure.

The step before the first step: tax exempt or not?

Before you take any action, you should decide if you wish to apply for federal tax exempt status. *Not all non-profit corporations are tax exempt.* Only certain kinds of charities, schools, churches, hospitals, research institutes, etc., fall into that category.

If you think you may qualify, obtain **Publication 557** and **Form 1023** from:

Internal Revenue Service
Room E-104
John F. Kennedy Federal Building
Boston, MA 02203
(617) 523-1040
Forms 1-800-892-0288

Publication 557, "How to Apply for Recognition of Exemption for an Organization," explains how to apply for an exemption and discusses the kinds of non-profit corporations that qualify.

Should you decide to apply, you will use **Form 1023** as an application form. However, you cannot submit this application until another application, the **Articles of Organization** for your corporation, has been filed with and certified by the Corporations Division of the Office of the Secretary of State (address below).

Does this mean that certification for tax exemption and status as a non-profit corporation are two entirely separate matters?

Yes and no! The IRS will consider applications for exemption from both incorporated and unincorporated non-profit organizations. But corporations must be certified as such by the Secretary of State. So in that sense they are separate matters.

However, certification as a non-profit corporation does not guarantee federal tax exemption. If you wish to apply for an IRS exemption, the Articles of Organization which you submit to the Secretary of State will also have to conform with the federal laws relating to tax exemption. In other words, if you wish to apply for the federal exemption, the form you submit to the Secretary of State will have to be written with that in mind.

What are the Articles of Organization?

The Articles of Organization contain the information you supply to the Secretary of State when you seek to obtain status as a non-profit corporation. This information is submitted on a blue form entitled Articles of Organization. This form can be obtained from:

Corporations Division
Office of the Secretary of State
Room 1717
One Ashburton Place
Boston, MA 02108
(617) 727-9440

What information is included in the Articles of Organization?

First, state the name of the corporation. Even though it will be non-profit, it must include one of the following words: Limited (Ltd.), Incorporated (Inc.), or Corporation (Corp.). The name must not be the same or very similar to another Massachusetts corporation.

You may reserve a corporate name for 30 days, renewable once for an additional 30 days. Reservations must be made in writing or in person, and accompanied by a fee of \$10.00 (renewal is also \$10.00). It is possible to check the availability of a corporate name by telephone, (617) 727-9640. However, a telephone availability is PRELIMINARY only and DOES NOT guarantee availability.

The Articles of Organization also include a section in which you state the purposes of your non-profit corporation. The purposes may be stated very simply, in every day language.

“It is the intent of this corporation to send needy inner city children to summer camp” would be an adequate statement of purposes for filing with the Secretary of State.

However, if you intend to apply for federal tax exempt status, you will have to elaborate on the purposes in a different section of the application. That section is Question #4 of the Articles of Organization, also known as the “other lawful provisions” clause.

What goes into Question #4?

If you do not intend to apply for federal tax exemption, the answer to Question #4 is either NONE or a listing of any special provisions in your corporate by-laws.

If you plan to apply for federal tax exemption, the answer to Question #4 will normally be far more complex. It will have to further define the purposes, the means of achieving those purposes, procedures for corporate dissolution, etc. It will have to be prepared with language and format which conform to the many specifications for exemptions set out in Form 1023.

The answer you give to Question #4 will play a large part in the determination of your tax status by the IRS. If you are at all unsure of IRS guidelines as set out in Form 1023, this may be the time to consult a lawyer.

What else goes into the Articles of Organization?

You may have to submit information concerning the categories of membership in the organization. You will have to attest in writing that by-laws have been adopted and corporate officers have been selected. You will have to indicate the principal office of the corporation. You must list a street address as the official corporate address; a post office box is not acceptable.

The law governing non-profit corporations in the commonwealth is Chapter 180 of the Massachusetts General Laws. You can find the General Laws in any public library, or for \$12.00 (plus \$1.75 shipping fee) you can order *Massachusetts Corporate Laws*, a compilation of state laws relating to corporations, from:

The State Bookstore
Office of the Massachusetts Secretary of State
Room 116
State House
Boston, MA 02133
(617) 727-2834

How do you file your completed Articles of Organization?

You take or mail the completed form to the Corporations Division of the Office of the Secretary of State at the previously listed address.

Is there a fee?

Yes. The fee for filing is \$30.00 and payment must be made by check to the Commonwealth of Massachusetts.

How are you notified of certification?

Approximately one month after the Articles of Organization have been approved by the Secretary of State, a copy will be mailed to the filing party. This serves as notification of approval.

If, for some reason, approval has been denied, the Corporations Division will notify you by telephone or mail at the corporate address.

Is that all?

If you do not wish to file for tax exemption, the process is completed. If you do, however, you must now fill out **Form 1023**, and attach to it certified copies of both your corporate by-laws and your **Articles of Organization**. The by-laws must be signed by a corporate officer or by a person possessing power-of-attorney for the corporation, attesting under penalties of perjury to the validity of the document. You may then take the forms to this address:

IRS Exemptions
Room E-104
John F. Kennedy Federal Building
Boston, MA 02203
1-800-424-1040

There is no fee for this filing.

When are you notified of tax exemption?

The IRS will notify you in approximately two months. You will receive a letter at your corporate address confirming your tax exempt status, denying such status, or requesting further information before such a ruling is made. A letter of confirmation will also contain instructions regarding the kind of substitute tax return that your organization will have to file yearly with the IRS.

If you receive a federal exemption does that automatically guarantee state and local exemptions?

No. To apply for exemptions on local property taxes, you must fill out **Form 3abc** supplied by your local assessor or obtained from:

Department of Revenue
Determinations Bureau
Local Service
200 Portland Street
Boston, MA 02204
(617) 727-2300

Submit this form to your local assessor with a copy of the IRS exemption letter. Some local assessors will tend to grant exemptions if the IRS does; others may not do so without further investigation. Before you file your Articles of Organization you should find out from your local assessor whether a local property tax exemption is likely.

If the IRS grants a federal tax exemption you *are* eligible for an exemption on state corporation income taxes. In order to qualify you must send a photocopy of your IRS exemption letter to:

Corporate Exemptions
Department of Revenue
Determinations Bureau
100 Cambridge Street, 3rd Floor
Boston, MA 02204
(617) 727-2517

Once you have filed your IRS letter with Corporate Exemptions, you *do not* have to file any substitute for a state corporate income tax.

If the IRS grants a federal tax exemption, you are also eligible for an exemption on your state sales tax. In order to acquire this exemption, you fill out **Form TA1** and submit it, with a copy of your IRS exemption letter, to:

Department of Revenue
Determinations Bureau
100 Cambridge St., Room 303
Boston, MA 02204
(617) 727-0135

The application form is available at the above address.

Now that I am organized, is there anything to remember?

■ Yes. If your corporation is non-profit, but *not* tax exempt, every year you must:

- a. File a short form entitled **Annual Report** with the Corporations Division of the Office of the Secretary of State at the previously listed address. Deadline is November 1.
- b. File a state corporate income tax with:

Dept. of Revenue
215 First Street
Cambridge, MA 02142
(617) 727-4272

- c. File a federal corporate income tax return with the IRS at:

Internal Revenue Service Center
Taxpayer Assistance
310 Lowell St.
Andover, MA 01812
1-800-424-1040

■ If your corporation is non-profit *and* tax-exempt, every year you must:

- a. File a short form entitled **Annual Report** with the Corporations Division of the Secretary of State at the previously listed address. Deadline is November 1.
- b. File an annual **Form PC** report (for the prior fiscal year) with the Division of Public Charities. The form is available from:

Division of Public Charities
Office of the Attorney General
21st Floor
One Ashburton Place
Boston, MA 02108
(617) 727-2235

Note: Certain kinds of churches, hospitals, schools, firefighter and police organizations, etc., may be exempt from filing Form PC. For further information contact the Division of Public Charities at the address above.

Non-profit corporations almost always fall into one of the following categories:

- a. For any civic, educational, charitable, benevolent or religious purpose;
- b. For the prosecution of any antiquarian, historical, literary, scientific, medical, chiropractic, artistic, monumental or musical purpose;
- c. For establishing and maintaining libraries;
- d. For supporting any missionary enterprise having for its object the dissemination of religious or educational instruction in foreign countries;
- e. For promoting temperance or morality in the Commonwealth;
- f. For fostering, encouraging, or engaging in athletic exercise or yachting;
- g. For encouraging the raising of choice breeds of domestic animals or poultry;
- h. For the association and accommodation of societies of Free Masons, Odd Fellows, Knights of Pythias or other charitable or social bodies of like character and purpose;

- i. For the establishment and maintenance of places for reading rooms, libraries, or social meetings;
- j. For establishing boards of trade, chambers of commerce and bodies of like nature;
- k. For providing non-profit credit counseling services, as defined in section 4A of Chapter 180;
- l. For encouraging agriculture or horticulture; for improving and ornamenting the streets and public squares of any city or town by planting and cultivating ornamental trees therein and also otherwise improving the physical aspects of such city or town and furthering the recreation and enjoyment of the inhabitants thereof.

Penalties

The Office of the Secretary of State will move upon the request of the selectman or alderman and in Boston, the Police Commissioner, to revoke the charter of any non-profit corporation if one or more individuals are convicted of:

- a. illegally selling or keeping alcoholic beverages on the premises;
- b. illegally conducting gambling or keeping gambling implements on the premises;
- c. illegally conducting a boxing match on the premises.

For further information contact:

Michael J. Connolly,
Massachusetts Secretary of State
Corporations Division
One Ashburton Place
17th Floor
Boston, MA 02108
(617) 727-9640
or
Citizen Information Service
1-800-392-6090 (toll free)